

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *JE* D.C.
05 JUL 27 AM 10:24

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF TENNESSEE

SAMUEL D. LEGGETT, et al.,

Plaintiffs,

v.

DUKE ENERGY CORPORATION,
et al.,

Defendants.

NO. 05-2177 Ma/An

ORDER DENYING MOTION FOR RECONSIDERATION AND
GRANTING MOTION FOR CLARIFICATION

Before the Court is Defendants' Motion for Clarification or Reconsideration filed on July 1, 2005. For the reasons set forth below, the Motion for Reconsideration is **DENIED** and the Motion for Clarification is **GRANTED**.

BACKGROUND

On June 17, 2005, Defendants filed a Joint Motion for Extension of Time to Answer or Otherwise Respond to the Complaint. Defendants requested they be allowed forty-five days after a ruling on Plaintiffs' Motion to Remand to answer or otherwise respond to Plaintiffs' Complaint. The Undersigned entered an Order on June 27, 2005 denying the Motion for Extension of Time and holding that "Defendants shall answer or otherwise respond to Plaintiffs' Complaint within 30 days of service of a Complaint and summons."

Defendants now ask that the Court reconsider denying the June 17, 2005 motion. Defendants argue that multiple motions are currently pending before the Court, including a

motion to remand, a motion to stay, and a motion before the MDL panel to transfer this case to the district court in Nevada. Defendants contend, and Plaintiffs do not oppose, that the Court should grant Defendants an extension of time to answer or otherwise respond to the Complaint after the motion to remand has been resolved. Defendants also request that the Court clarify its June 27, 2005 Order because “the June 27 Order does not explain why the unopposed motion was denied.” (Joint Mot. for Clarification or Reconsideration, at 2).

ANALYSIS

I. Motion for Reconsideration

A court’s previous Order should be set aside under Fed. R. Civ. P. 60(b) only if the moving party proves “(1) [t]he existence of mistake, inadvertence, surprise, or excusable neglect [and] (2) [t]hat he has a meritorious defense.” *Marshall v. Monroe & Sons, Inc.*, 615 F.2d 1156, 1160 (6th Cir. 1980). Whether or not to grant Rule 60(b) relief, however, is within the discretion of the Court. *Jacobs v. DeShetler*, 465 F.2d 840, 843 (6th Cir. 1972). After due consideration and because there has been no mistake or excusable neglect, the Court concludes that the Motion to Reconsider should be **DENIED**.

As mentioned above, Defendants argue the Court should reconsider its previous ruling because there are three motions pending before the Court: a motion to stay, a motion to remand, and a motion before the MDL panel to transfer this matter to Nevada. The fact that a Motion to Remand is pending, in and of itself, does not justify delaying the natural progression of a lawsuit. Motions to Remand are not uncommon in matters with a procedural history similar to this

matter.¹ Generally, a Motion to Remand pending before the Court does not warrant the relief requested in Defendants' Motion.

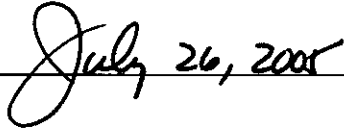
Furthermore, the Court notes that Defendants filed a Motion to Stay Proceedings on April 26, 2005; however, United States District Judge Samuel H. Mays, Jr. has not yet ruled on the Motion to Stay. The current Motion, if granted, would have the same effect as staying this action, since Defendants would not answer or otherwise respond to Plaintiffs' Complaint until after Judge Mays rules on the Motion to Remand. Since Judge Mays has not concluded that the matter should be stayed, the Undersigned is not inclined to grant the relief requested since it would have the same effect as halting the natural progression of this case. As such, the Motion to Extend the Deadline to Answer is **DENIED**.

II. Motion for Clarification

For good cause shown, the Motion for Clarification of the June 27, 2005 Order is **GRANTED**. The June 27, 2005 Order Denying Motion to Extend Deadline to Answer is hereby amended to state that Defendants shall answer or otherwise respond to Plaintiffs' Complaint within 15 days of entry of this Order, or within 30 days of service of a Complaint and summons, whichever period is longer.

IT IS SO ORDERED.


S. THOMAS ANDERSON
UNITED STATES MAGISTRATE JUDGE

Date: 

¹This matter was removed to federal court on March 7, 2005 from the Chancery Court of Somerville, Tennessee. A Motion to Remand was filed on April 6, 2005.



Notice of Distribution

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Barbara Walls
CHANCERY COURT, 25TH JUDICIAL DISTRICT
Fayette County Courthouse
Somerville, TN 38068

Robert B. Wolinsky
HOGAN & HARTSON L.L.P.
555 13th Street, NW
Washington, DC 20004

John S. Wilder
WILDER & SANDERS
108 E. Court Square
Somerville, TN 38068--143

Shea Sisk Wellford
MARTIN TATE MORROW & MARSTON
6410 Poplar Ave.
Ste. 1000
Memphis, TN 38119

James J. Webb
CRONE & MASON, PLC
5100 Poplar Ave.
Ste. 3200
Memphis, TN 38137

Douglas Tribble
PILLSBURY WINTHROP LLP
50 Fremont Street
San Francisco, CA 94105

Amy E. Tabor
BAKER BOTTS, LLP
910 Louisiana
Houston, TX 77002

Leslie H. Spiegel
DICKSTEIN SHAPIRO MORIN & OSHINSKY, LLP
2101 L Street NW
Washington, DC 20037

Heather Skinazi
SIDLEY AUSTIN BROWN & WOOD LLP
555 West Fifth Street
Los Angeles, CA 90013

Jeffrey M. Shohet
DLA PIPER RUDNICK GRAY CARY US LLP
4365 Executive Dr.
Ste. 1100
San Diego, CA 92121

Steven J. Routh
HOGAN & HARTSON, L.L.P.
555 13th Street, NW
Washington, DC 20004

Mark R. Robeck
BAKER BOTTS, LLP
910 Louisiana
Houston, TX 77002

Glen G. Reid
WYATT TARRANT & COMBS
P.O. Box 775000
Memphis, TN 38177--500

Diane Pritchard
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105--248

Amy Pepke
ARMSTRONG ALLEN, PLLC
80 Monroe Avenue
Ste. 700
Memphis, TN 38103--246

Paul Howard Morris
MARTIN TATE MORROW & MARSTON
6410 Poplar Ave.
Ste. 1000
Memphis, TN 38119

Joel B. Kleinman
DICKSTEIN SHAPIRO MORIN & OSHINSKY, LLP
2101 L Street NW
Washington, DC 20037

Noah A. Katsell
DLA PIPER RUDNICK GRAY CARY US LLP
4365 Executive Dr.
Ste. 1100
San Diego, CA 92121

Michael Kass
PILLSBURY WINTHROP LLP
50 Fremont Street
San Francisco, CA 94105

Mark H. Hamer
DLA PIPER RUDNICK GRAY CARY US LLP
4365 Executive Drive
Suite 1100
San Diego, CA 92121

Mark Haddad
SIDLEY AUSTIN BROWN & WOOD LLP
555 West Fifth Street
Los Angeles, CA 90013

John S. Golwen
BASS BERRY & SIMS PLC- Memphis
100 Peabody Place
Ste. 900
Memphis, TN 38103

Jef Feibelman
BURCH PORTER & JOHNSON
130 N. Court Avenue
Memphis, TN 38103

Brian S. Faughnan
ARMSTRONG ALLEN, PLLC
80 Monroe Avenue
Ste. 700
Memphis, TN 38103--246

Alan G. Crone
CRONE & MASON, PLC
5100 Poplar Ave.
Ste. 3200
Memphis, TN 38137

Robert E. Craddock
WYATT TARRANT & COMBS
P.O. Box 775000
Memphis, TN 38177--500

J. Gregory Copeland
BAKER BOTTS, LLP
910 Louisiana
Houston, TN 77002

Thomas H. Brill
LAW OFFICE OF THOMAS H. BRILL
6552 Sagamore Road
Mission Hills, KS 66208

Cannon F. Allen
ARMSTRONG ALLEN, PLLC
80 Monroe Avenue
Ste. 700
Memphis, TN 38103--246

Honorable Samuel Mays
US DISTRICT COURT